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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,423	02/06/2004	Ekkehard Sturzebecher	66722-043-7	2067

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EXAMINER

BARBEE, MANUEL L

ART UNIT PAPER NUMBER

2857

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,423

Applicant(s)

STURZEBECHER, EKKEHARD

Examiner

Manuel L. Barbee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

The specification should be amended to include proper headings and a section for "Brief Description of the Drawings" (See MPEP § 608.01(a)).

On page 4, line 4, delete "my", and insert --by--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by admitted prior art.

With regard to the statistical testing method, as shown in claim 1, Applicant states that Mardia, 1972, teaches a calculation rule for the "q-sample uniform scores test" that uses only phase angles (page 3, line 10 - page 4, line 19).

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Sturzebecher et al. (Audiology & Neuro-Otology, Jan. 1999).

With regard to the statistical testing method, as shown in claim 1, Sturzebecher et al. teach a calculation rule for the "q-sample uniform scores test" that uses only phase angles (page 3, col. 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of Sturzebecher et al. (US Patent No. 6,071,246).

The admitted prior art teaches all the limitations of claim 1 upon which claim 2 depends. The admitted prior art does not teach that the phase angles are calculated by Fourier transformation. Sturzebecher et al. teach calculating the phase spectrum using a fast fourier transformation (FFT) (col. 10, lines 14-29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the statistical testing method, as taught by the admitted prior art, to include calculating the phase angles using FFT, as taught by Sturzebecher et al., because then the method of calculation would have been widely available for calculation on a computer.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sturzebecher et al. (Audiology & Neuro-Otology, Jan. 1999) in view of Sturzebecher et al. (US Patent No. 6,071,246).

Sturzebecher et al. (Audiology & Neuro-Otology, Jan. 1999) teach all the limitations of claim 1 upon which claim 2 depends. Sturzebecher et al. (Audiology & Neuro-Otology, Jan. 1999) do not teach that the phase angles are calculated by Fourier

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transformation. Sturzebecher et al. '246 teach calculating the phase spectrum using a fast fourier transformation (FFT) (col. 10, lines 14-29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the statistical testing method, as taught by Sturzebecher et al. (Audiology & Neuro-Otology, Jan. 1999), to include calculating the phase angles using FFT, as taught by Sturzebecher et al. '246, because then the method of calculation would have been widely available for calculation on a computer.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 1-4 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-4 of copending Application No. 10/793,742. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

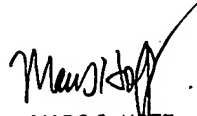
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel L. Barbee whose telephone number is 571-272-2212. The examiner can normally be reached on Monday-Friday from 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mlb
May 12, 2005


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
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